UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO.: 1:13-cr-00150-WTL-TAB
	)	
GUOQING CAO,	)	-01
SHUYU LI,	)	-02
	)	
Defendants.	)	

GOVERNMENT'S MOTION *IN LIMINE* FOR PRETRIAL DETERMINATION OF ADMISSIBILITY OF INCULPATORY STATEMENT OF DEFENDANT SHUYU LI

The United States of America ("the government"), through undersigned counsel, respectfully files its Motion *in Limine* for Pretrial Determination of Admissibility of Inculpatory Statement of Defendant Shuyu Li. In support thereof, the government states as follows:

I. Defendant Shuyu Li's Inculpatory Statement

On October 1, 2013, defendant Shuyu Li was interviewed by FBI Special Agents Matthew Stahl and Matthew Cook. A condition precedent to the interview was the advisement of defendant Li's *Miranda* rights and confirmation that defendant Li spoke and understood the English language. During the interview, defendant Li admitted: (1) familiarity with defendant Guoqing Cao; (2) an awareness that defendant Cao left his employment at Eli Lilly & Company ("Lilly) to begin work for Company A; (3) communicating with defendant Cao via defendant Li's personal e-mail account; (4) an awareness of Lilly policies regarding the sharing of company material; (5) transferring Lilly confidential material without authority to defendant Cao during defendant Cao's employment with

Company A; (6) understanding transferring the Lilly Property to defendant Cao was wrong; and (6) attempting to conceal the e-mail communications with defendant Cao by deleting them from his computer, among other things.

II. Properly redacted statements of non-testifying co-defendants are admissible

The portions of defendant Li's inculpatory post-*Miranda* statement that directly implicate defendant Cao in the requesting and transfer of Lilly Property are clearly inadmissible as evidence pursuant to the Sixth Amendment and the Supreme Court's seminal decision in *Bruton v. United States*, 391 U.S. 123 (1968). However, in a decision clarifying *Bruton*, the Court held in *Richardson v. Marsh*, 481 U.S. 200 (1987), that a properly redacted confession of a non-testifying co-defendant was admissible where it did not directly implicate the defendant.

In *Richardson*, the Court interpreted *Bruton* to hold that "a defendant is deprived of his Sixth Amendment right of confrontation when the facially incriminating confession of a non-testifying co-defendant is introduced at a joint trial, even if the jury is instructed to consider the confession only against the co-defendant." *Id.* at 207 (*citing Bruton*, 391 U.S. at 135-36). Notwithstanding the same, the *Richardson* Court specifically limited *Bruton* to situations where a co-defendant's confession facially incriminates another defendant. *Id.* at 208. Where a co-defendant's confession does not facially incriminate another defendant, but merely incriminates another defendant when linked with other evidence introduced during the trial, *Bruton* does not apply. *Id.* The *Richardson* Court further indicated that the government could comply with *Bruton* by redacting portions of the confession that facially incriminate another defendant. *Id.* at 208-209 (*citing Bruton*, 391 U.S. at 134, n. 10).

If properly redacted so as to avoid directly implicating defendant Cao, defendant Li's statement should be admitted at trial. *See* Fed.R.Evid., Rule 801(d)(2). The government herein submits defendant Li's statement under seal with proposed redactions highlighted. These proposed redactions meet the *Richardson* burden, and the statement should be deemed admissible at the trial of this matter, scheduled to commence January 6, 2015.

III. Conclusion

WHEREFORE, the government tenders its proposed redactions of defendant Li's post-*Miranda* statement under seal, respectfully moves the Court *in limine* for a pretrial ruling regarding admissibility, and for all and other just relief.

Respectfully submitted,

JOSH J. MINKLER
Acting United States Attorney

By: */s/ Cynthia J. Ridgeway*
Cynthia J. Ridgeway
Assistant United States Attorney
Office of the United States Attorney
10 W. Market St., Suite 2100
Indianapolis, Indiana 46204-3048
Telephone: (317) 226-6333
Fax: (317) 226-5953
E-mail: Cynthia.ridgeway@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the defendants on the date of filing, by and through operation of the Court's e-filing system. The attachment to the submission was served electronically on the parties of record. The parties may access the filing by operation of the Court's electronic filing system.

/s/ Cynthia J. Ridgeway
Cynthia J. Ridgeway
Assistant United States Attorney

Office of the United States Attorney
Ten West Market Street, Suite 2100
Indianapolis, IN 46204
(317) 226-6333
cynthia.ridgeway@usdoj.gov